

Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	CG Docket No. 13-29
)	EB Docket No. 13-35
)	IB Docket No. 13-30
2012 Biennial Review of)	ET Docket No. 13-36
Telecommunications Regulations)	PS Docket No. 13-31
)	WT Docket No. 13-32
)	WC Docket No. 13-33

REPLY COMMENTS OF COMPTTEL

COMPTTEL respectfully submits these comments, pursuant to the Federal Communications Commission’s (“Commission”) Public Notice (FCC 13-17)(“Notice”)¹, in response to comments filed by Verizon and Verizon Wireless (“Verizon”) and by CenturyLink on March 6, 2013.

In its Public Notice, the Commission sought input on what rules should be modified or repealed as part of the 2012 biennial review. The Commission stated that the submissions should 1) specifically identify the rule(s) that the commenting party was seeking to have modified or repealed, 2) explain why and how the rule(s) should be modified or repealed, and 3) discuss how their suggested rules changes satisfy the standard of Section 11 as interpreted by the D.C. Circuit Court in *Cellco Partnership*.²

¹ FCC Public Notice, “Wireline Competition Bureau Seeks Comment on Request to Refresh Record and Amend the Commission’s Copper Retirement Rules,” DA 13-147, WC Docket No. 12-353; RM-11358 (rel. Feb. 4, 2013).

² Id.

Verizon has failed to provide the requisite information.³ Since its pleading is procedurally flawed it should not be considered. Nonetheless, to the extent the Commission considers any of the issues Verizon raises, through comments it provided in other proceedings, COMPTTEL incorporates, by reference, its comments in those proceedings as well as COMPTTEL's opposition to USTelecom's petition for forbearance from certain legacy telecommunications regulations.⁴ In COMPTTEL's Opposition to USTelecom's petition, COMPTTEL addresses issues raised both by Verizon and CenturyLink.⁵

Additionally, in response to Verizon's request to eliminate the requirement to provide a 64 kbps voice-grade channel over fiber loops in areas where copper has been retired, COMPTTEL incorporates, by reference, the comments it submitted in support of refreshing the record on copper retirement.⁶ In those comments, COMPTTEL stresses the

³ Comments of Verizon and Verizon Wireless, *In the Matter of 2012 Biennial Regulatory Review of Regulations*, WC Docket No. 13-33 et al, filed Mar. 6, 2013.

⁴ Comments of COMPTTEL, *In the Matter of AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, Petition of NTCA for Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution*, GN Docket No. 12-353, filed Jan. 28, 2013; COMPTTEL's Opposition and Reply Comments, *In the Matter of Petition of USTelecom for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant In The Provision of Switched Access Services*, WC Docket No. 13-3, filed Feb. 25, 2013 and Mar. 12, 2013, respectfully; Opposition of COMPTTEL, *In the Matter of Petition of USTelecom for Forbearance Under 47 USC §160(c) From Enforcement Of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, filed Apr. 9, 2012.

⁵ Comments of CenturyLink, *2012 Biennial Regulatory Review of Regulations Administered By the Wireline Competition Bureau*, WC Docket No. 13-33, filed Mar. 6, 2013.

⁶ Comments of COMPTTEL, *In Matter of Request to Refresh Record and Amend the Commission's Copper Retirement Rules*, WC Docket No. 12-353 and RM-11358, filed Mar. 5, 2013.

need for the Commission to take action to ensure competitors access to last mile facilities – and not allow the elimination of last mile access as Verizon seeks.

In addition, Verizon states that the Commission should “confirm,” as part of the biennial review, “that all IP-enabled services are inherently interstate.” As an initial matter, Verizon did not merely fail to provide the requisite information to support its request, this request is inappropriate as part of the biennial review because it is not a request for a rule modification or repeal. (Hence Verizon failed to identify a rule(s) it believed should be modified or repealed.) Rather, Verizon is seeking a declaratory ruling. This is outside the scope of the biennial review.

Moreover, there is no justification for the Commission finding IP-enabled services inherently interstate, nor would such a statement be consistent with – let alone a confirmation of – Commission precedent. As the Eighth Circuit held, the Commission did not preempt fixed VoIP services in the *Vonage Order* and “the FCC has since indicated VoIP providers who can track the geographic end-points of their calls do not qualify for the preemptive effects of the *Vonage order*.”⁷

Furthermore, even if the Commission were to extend the effects of the *Vonage Order* to other IP-enabled services, they would be preempting state law, not federal law. For example, Section 251 would still apply to the services. While the Commission’s finding in the *Local Competition Order* that carriers seeking interconnection *only* for interexchange service are not entitled to interconnection pursuant to section 251(c)(2), finding (as the Commission did in the *Vonage Order*) that there was no practical means to separate the service by jurisdiction (and therefore there is a conflict of jurisdiction) is

⁷ *Minn. PUC v. FCC*, 483 F.3d 570 (8th Cir. 2007).

not the same as finding the interconnection is only being sought for an interexchange interstate service when it involves IP-enabled services.

As a general matter, in its petition, Verizon argues that it should be free of existing regulation because, “today consumers have a range of services made available over competitive wireline and wireless IP-based broadband technologies... [and] the Commission should ensure that legacy regulations are not hampering pro-consumer developments.” While Verizon and other large ILECs repeatedly make this claim, they have not been able to effectively demonstrate its truth. As one example to the contrary, in a complaint to the New York State Public Service Commission, filed prior to Hurricane Sandy, the Village of Saltaire states that Verizon is the sole provider of land line services to the community and faces “no pressure from an alternative service provider. The Village of Saltaire and the other [Verizon] customers located in the Village of Saltaire for many years have suffered extensive and significant problems with the service provided by the [Verizon] that [Verizon has] failed and or refused to correct...”

Subsequently, on February 20, 2013, the Village of Saltaire noted the systems were not working at all since October 29, 2012, and that Verizon had taken no action to correct the situation. In doing so, they discussed their dependency of Verizon.⁸

The Village of Saltaire Volunteer Fire Company provides fire protection and ambulance services to the entire area of western Fire Island. This essential service requires Verizon service for communication of emergencies to the Fire Department, for the activation of alarms to members, and for communication with "the Suffolk County Fire and Rescue Emergency Services. The Fire Company is

⁸ Letter from Joseph W. Prokop, Village Attorney to Honorable Jaclyn A. Brillling, Secretary, New York State Public Service Commission, Complaint by the Village of Saltaire and the customers of Verizon within the Village of Saltaire against Verizon and Verizon Communications, Inc., filed February 20, 2013.

unable to effectively provide these essential services without working Verizon land line service.

The Village of Saltaire government requires working Verizon land line and DSL service for telephone and facsimile communication as well and internet service for the Village office and the Village is unable to effectively provide the essential services that the government provides to the community without the land line service in place.

The residents of Saltaire similarly rely on Verizon land line and DSL service for their home service and communications in the Village of Saltaire.⁹

It should also be stressed that pushing customers off of Verizon landline services onto Verizon's LTE service does not amount to competition. It does not even amount to the offering of a comparable choice among Verizon's own service offerings, as it has been questioned on its service quality, reliability, and cost.¹⁰ Moreover, the "service cannot be used with home security systems, fax machines, medical alert systems, credit card

⁹ Id.

¹⁰ See Karl Bode, "Verizon Tells Some Sandy Victims They'll Never Get DSL Back" Mar. 22, 2013, available at <http://www.broadbandreports.com/shownews/Verizon-Tells-Some-Sandy-Victims-Theyll-Never-Get-DSL-Back-123612> [Verizon's "goal is to either force DSL users to shift to FiOS (a limited option since FiOS expansion has all but stopped), convert to LTE (and the pricey overages that entails)..."]; See also, [Stacey Higginbotham](#), "The End of Landlines: No Phone Numbers and No International Calling Charges," Nov. 8, 2012, available at: <http://gigaom.com/2012/11/08/the-end-of-landlines-no-phone-numbers-and-no-international-calling-charges/> ["But LTE costs a lot more than a landline and can come with data caps. It's unlikely that any LTE solution will be as reliable as the PSTN..."]; See also, Phillip Dampier, "AT&T Cannibalizes Its Own Landline Business with New Wireless Replacement" Mar. 27, 2013 available at: <http://stopthecap.com/2013/03/27/att-cannibalizes-its-own-landline-business-with-new-wireless-replacement/> ["Emergency 911 calls lack exact geographic information, which could make locating a caller more difficult; The service is unregulated and has no local or state government oversight to guarantee call quality and reliability... Verizon Wireless offers their own version of this service: Wireless Home Phone Connect... It gets mixed reviews from owners because of complaints about call quality."]

terminals, dial-up Internet, or other data services.”¹¹ In any event, it is certainly does not provide justification for the elimination any pro-consumer, pro-competitions protections.

The Commission should reject, regardless of the proceeding in which it is submitted, Verizon’s proposal to thwart the pro-competitive, pro-consumer provisions of the Communications Act, as amended, and/or any implementing regulations.

Respectfully submitted,
/s/

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¹¹ Phillip Dampier, “[AT&T Cannibalizes Its Own Landline Business with New Wireless Replacement](http://stopthecap.com/2013/03/27/att-cannibalizes-its-own-landline-business-with-new-wireless-replacement/)” Mar. 27, 2013 available at: <http://stopthecap.com/2013/03/27/att-cannibalizes-its-own-landline-business-with-new-wireless-replacement/>